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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

6 * * *

7 GREEN TREE SERVICING, LLC.,

8 Plaintiff(s),

9 v.

10 NV EAGLES, LLC
11 SHADOW SPRINGS COMMUNITY
ASSOCIATION,

12 Defendant(s),

13 and,

14 FEDERAL HOUSING FINANCE AGENCY,

15 Intervenor-Plaintiff.

Case No. 2:15-cv-00590-RFB-EJY

ORDER

16
17 **I. INTRODUCTION**

18 Before the Court are Intervenor-Plaintiff Federal Housing Finance Agency's ("FHFA")
19 and Plaintiff Ditech Financial LLC f/k/a Green Tree Servicing LLC's ("Ditech") Motion for
20 Summary Judgment, Plaintiff Green Tree Servicing LLC's Motion for Summary Judgment on
21 Tender, and Defendant Shadow Springs Community Association's Motion for Partial Summary
22 Judgment. ECF Nos. 109, 113, 120. For the following reasons, the Court grants FHFA's motion.
23

24 **II. PROCEDURAL BACKGROUND**

25 Ditech filed its second amended complaint, the operative complaint, against Defendants
26 NV Eagles, LLC ("NV Eagles") and Shadow Springs Community Association ("Shadow Springs"
27 or "HOA") on August 17, 2016. ECF No. 74. In its complaint Green Tree asserts the following
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1 causes of action: quiet title as against NV Eagles, declaratory relief as against NV Eagles, negligent
2 misrepresentation as against Shadow Springs, and declaratory relief in favor of Ditech. NV Eagles
3 filed its answer on August 23, 2016. ECF No. 75. The Court granted FHFA's motion to intervene
4 on September 9, 2016, and FHFA filed its intervenor-complaint on September 20, 2016. ECF Nos.
5 76, 79. On May 22, 2017 this Court stayed the case pending pertinent decisions in the Ninth Circuit
6 Court of Appeals and the Nevada Supreme Court. ECF No. 99. The Court lifted the stay on April
7 8, 2019. ECF No. 106. FHFA filed its motion for summary judgment. ECF No. 109. FHFA's
8 motion was fully briefed. ECF Nos. 110, 111. Ditech filed its motion for summary judgment on
9 tender on June 27, 2019. ECF No. 113. NV Eagles and Shadow Springs filed their responses in
10 opposition on July 18, 2019. ECF Nos. 121, 122. On July 12, 2019 Shadow Springs filed its
11 motion for partial summary judgment. ECF No. 120. Third-Party Defendant Red Rock Financial
12 Services, LLC joined Shadow Spring's Motion on July 22, 2019. On August 13, 2019, Ditech
13 stipulated with Shadow Springs Community Association to dismiss Ditech's claim of negligent
14 misrepresentation with prejudice. Shadow Springs also stipulated to dismiss its third-party claims
15 against Red Rock Financial Services, LLC, thus mooted Defendant Shadow Spring's motion for
16 summary judgment and terminating both Red Rock Financial Services, LLC and Shadow Spring
17 Community Association's participation in this case.

21 **III. FACTUAL BACKGROUND**

22 The Court finds the following facts to be undisputed.¹

24 **a. Undisputed Facts**

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27 ¹ The Court takes judicial notice of the publicly recorded documents related to the deed of trust and the
28 foreclosure as well as Fannie Mae's Single-Family Servicing Guide. Fed. R. Evid. 201 (b), (d); Berezovsky v. Moniz,
869 F.3d 923, 932–33 (9th Cir. 2017) (judicially noticing the substantially similar Freddie Mac Guide); Lee v. City of
Los Angeles, 250 F.3d 668, 690 (9th Cir. 2001) (permitting judicial notice of undisputed matters of public record)

1 This matter concerns a nonjudicial foreclosure on a property located at 6137 Talbot
2 Springs, North Las Vegas, 89091 (the "property"). The property sits in a community governed by
3 the HOA. The HOA requires its community members to pay HOA dues

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5 James H. Urello borrowed funds from KB Home Mortgage Company to purchase the
6 property in 2004. To obtain the loan, Urello executed a promissory note and a corresponding deed
7 of trust to secure repayment of the note. The deed of trust listed Urello as the borrower, KB Home
8 Mortgage Company as the lender, and Mortgage Electronic Registrations Systems, Inc. ("MERS")
9 as beneficiary. The deed of trust was recorded on November 12, 2004. On May 20, 2010 MERS
10 assigned the deed of trust to BAC Home Loans Servicing LP, fka Countrywide Home Loans
11 Servicing LP. Bank of America, National, Association ("BANA") became the successor through
12 a de jure merger with BAC Home Loans Servicing, LP fka Countrywide Home Loans, Inc., on
13 July 1, 2011. On February 16, 2012, MERS, as nominee for Lender, recorded a second assignment
14 of the deed to BANA. On September 6, 2013, BANA recorded an assignment of the deed of trust
15 to EverBank. On November 26, 2014, an assignment of the deed of trust from EverBank to Ditech
16 was recorded.
17
18

19 Urello fell behind on HOA dues. From May 2009 through June 2013, the HOA, through
20 its agent, recorded a lien for delinquent assessment concerning past-due assessments, followed by
21 a notice of default and election to sale, and a notice of foreclosure sale upon the property. The
22 foreclosure sale occurred on May 30, 2013, when Underwood Partners LLC purchased the
23 property for \$21,000.00, according to a foreclosure deed recorded on July 3, 2013. On October 18,
24 2013, a Bargain Sale deed was recorded that stated that Underwood had conveyed the property to
25 NV Eagles for \$10.00.
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1 However, the Federal National Mortgage Association (“Fannie Mae”) previously
2 purchased the loan and deed of trust in December 2004. While its interest was never recorded
3 under its name, Fannie Mae continued to maintain its ownership of the note and the deed of trust
4 at the time of the foreclosure. BANA was the servicer of the loan for Fannie Mae at the time of
5 the foreclosure sale.
6

7 The relationship between Fannie Mae and its servicers, is governed by Fannie Mae’s
8 Single-Family Servicing Guide (“the Guide”). The Guide provides that servicers may act as record
9 beneficiaries for deeds of trust owned by Fannie Mae. It also requires that servicers assign the
10 deeds of trust to Fannie Mae on Fannie Mae’s demand. The Guide states:
11

12 The servicer ordinarily appears in the land records as the mortgagee to
13 facilitate performance of the servicer's contractual responsibilities,
14 including (but not limited to) the receipt of legal notices that may
15 impact Fannie Mae's lien, such as notices of foreclosure, tax, and other
16 liens. However, Fannie Mae may take any and all action with respect to the
17 mortgage loan it deems necessary to protect its ... ownership of the mortgage
18 loan, including recordation of a mortgage assignment, or its legal
19 equivalent, from the servicer to Fannie Mae or its designee. In the event
20 that Fannie Mae determines it necessary to record such an instrument, the
servicer must assist Fannie Mae by [] preparing and recording any required
documentation, such as mortgage assignments, powers of attorney, or
affidavits; and [by] providing recordation information for the affected
mortgage loans.

21 The Guide also allows for a temporary transfer of possession of the note when necessary
22 for servicing activities, including “whenever the servicer, acting in its own name, represents the
23 interests of Fannie Mae in ... legal proceedings.” The temporary transfer is automatic and occurs
24 at the commencement of the servicer's representation of Fannie Mae. The Guide also includes a
25 chapter regarding how servicers should manage litigation on behalf of Fannie Mae. But the Guide
26 clarifies that “Fannie Mae is at all times the owner of the mortgage note[.]” Finally, under the
27 Guide, the servicer must “maintain in the individual mortgage loan file all documents and system
28 records that preserve Fannie Mae’s ownership interest in the mortgage loan.”

1 Finally, the Guide “permits the servicer that has Fannie Mae’s [limited power of attorney]
2 to execute certain types of legal documents on Fannie Mae’s behalf.” The legal documents include
3 full or partial releases or discharges of a mortgage; requests to a trustee for a full or partial
4 reconveyance or discharge of a deed of trust, modification or extensions of a mortgage or deed of
5 trust; subordination of the lien of a mortgage or deed of trust, conveyances of a property to certain
6 entities; and assignments or endorsements of mortgages, deeds of trust, or promissory notes to
7 certain entities.

8 In 2008, Congress passed the Housing and Economic Recovery Act (“HERA”), 12 U.S.C.
9 § 4511 *et seq.*, which established the Federal Housing Finance Agency (“FHFA”). HERA gave
10 FHFA the authority to oversee the government-sponsored enterprises Fannie Mae and Freddie Mac
11 (collectively, the “Enterprises”). In accordance with its authority, FHFA placed the Enterprises,
12 including Fannie Mae, under its conservatorship in 2008. Neither FHFA nor Fannie Mae consented
13 to the foreclosure extinguishing Fannie Mae’s interest in the property in this matter.
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15 **b. Disputed Facts**

16 The parties dispute the admissibility of the documents FHFA has submitted to support its
17 position and dispute the legal question of whether Fannie Mae had acquired an interest in the
18 property under Nevada law at the time of the foreclosure sale.

19 **IV. LEGAL STANDARD**

20 Summary judgment is appropriate when the pleadings, depositions, answers to
21 interrogatories, and admissions on file, together with the affidavits, if any, show “that there is no
22 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of
23 law.” Fed. R. Civ. P. 56(a); accord Celotex Corp. v. Catrett, 477 U.S. 317, 322(1986). When
24 considering the propriety of summary judgment, the Court views all facts and draws all
25 inferences in the light most favorable to the nonmoving party. Gonzalez v. City of Anaheim,
26 747 F.3d 789, 793 (9th Cir. 2014). If the movant has carried its burden, the nonmoving party
27 “must do more than simply show that there is some metaphysical doubt as to the material facts
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.... Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.” Scott v. Harris, 550 U.S. 372, 380 (2007) (alteration in original) (internal quotation marks omitted). It is improper for the Court to resolve genuine factual disputes or make credibility determinations at the summary judgment stage. Zetwick v. Cty. of Yolo, 850 F.3d 436, 441 (9th Cir. 2017) (citations omitted).

V. DISCUSSION

The Federal Foreclosure Bar, 46 U.S.C. § 4617(j)(3) resolves this matter.² The Ninth Circuit has held that the Federal Foreclosure Bar preempts foreclosures conducted under NRS Chapter 116 from extinguishing a federal enterprise’s property interest while the enterprise is under FHFA’s conservatorship unless FHFA affirmatively consented to the extinguishment of the interest. Berezovksy v. Moniz, 869 F.3d 923, 927–31 (9th Cir. 2017). Under Berezovksy, summary judgment based on the Federal Foreclosure Bar is warranted if the evidence establishes that the enterprise had an interest in the property at the time of the HOA foreclosure sale. Id. at 932– 33. The Court finds that the evidence establishes that Fannie Mae had an interest in the property at the time of the HOA foreclosure sale.

The Court finds that NV Eagles has done no more than raise “metaphysical doubt” as to whether Fannie Mae lawfully acquired the loan. Scott v. Harris, 550 U.S. 372, 380 (2007) (alteration in original) (internal quotation marks omitted). FHFA supports its claim that Fannie Mae acquired the loan in December 2004 with a declaration from an assistant vice president, Graham Babin. ECF No. 109-2. Mr. Babin authenticates a printout from Fannie Mae’s Servicer &

² Because the Court finds that the Federal Foreclosure Bar is dispositive in this case, the Court declines to make any findings of fact or to otherwise address Ditech’s argument regarding tender.

1 Investor Reporting platform (“SIR”). The SIR system shows Fannie Mae acquired the loan on
2 December 1, 2004. The printouts also clearly trace the history of servicers of the loan from BANA
3 to Ditech.

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5 The Ninth Circuit has found that database records are admissible evidence to show that a
6 government-sponsored-enterprise acquired a loan. Berezovsky v. Moniz, 869 F.3d 923, 932 n.8
7 (9th Cir. 2017); Elmer v. JPMorgan Chase & Co., 707 Fed. Appx. 426, 428 (9th Cir. 2017).
8 Likewise, and most importantly, the Nevada Supreme Court has allowed a federal enterprise under
9 FHFA’s conservatorship to prove its property interest with materially identical evidence. Daisy
10 Trust v. Wells Fargo Bank, N.A., 445 P.3d 846 (Nev. 2019). Thus the Court finds that FHFA has
11 submitted admissible evidence of which there is no genuine dispute that shows that Fannie Mae
12 lawfully acquired the loan.

14 The Court also rejects NV Eagles’s contention that because the February 16, 2012 deed of
15 trust assigned the property to BANA, Fannie Mae no longer had an interest in the property. In
16 Berezovsky the Ninth Circuit explicitly found that a government sponsored enterprise raising the
17 federal foreclosure bar need not record its interest because “an ‘agency relationship’ with the
18 recorded beneficiary preserves the note owner’s power to enforce its interest . . . because the note
19 owner can direct the beneficiary to foreclose on its behalf.” 869 F.3d at 932. The Court has found
20 that BANA was Fannie Mae’s servicer at the time of the HOA foreclosure sale. This means that
21 BANA and Fannie Mae had a principal-agent relationship such that Fannie Mae could direct
22 BANA to foreclose on the loan. Additionally, under the recordation statute in effect at the time
23 that Fannie Mae acquired the loan in 2004, there was no recording requirement for an assignee of
24 a mortgage to enforce its interest. SFR Investments Pool 1, LLC v. Green Tree Servicing, LLC,

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1 432 P.3d 718 (Nev. 2018). For these reasons it is therefore immaterial whether Freddie Mac's
2 interest was recorded, as BANA served as Fannie Mae's agent during this time period.

3 Finally, the Court does not find there to be any evidence in the record that FHFA
4 affirmatively consented to the sale. The Ninth Circuit is clear in its construing of 12 U.S.C. §
5 4617j(3) that it does not provide for implied consent to foreclosure sales. Berezovsky, 869 F.3d at
6 929. NV Eagles has submitted no evidence to indicate that FHFA affirmatively consented to the
7 HOA foreclosure.
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10 **VI. CONCLUSION**

11 **IT IS THEREFORE ORDERED** that Intervenor-Plaintiff's FHFA's Motion for
12 Summary Judgment (ECF No. 109) is granted. The Court quiets title and declares that any interest
13 NV Eagles has in the property is subject to Fannie Mae's Deed of Trust

14 **IT IS FURTHER ORDERED** that Plaintiff Green Tree Servicing LLC (Ditech)'s Motion
15 for Summary Judgment on tender (ECF No. 113), and Defendant Shadow Springs Community
16 Association's Motion for Partial Summary Judgment (ECF No. 120) are denied as moot.

17 **IT IS FURTHER ORDERED** that Plaintiff's Green Tree Servicing LLC (Ditech's) lis
18 pendens (ECF No. 3) is expunged.

19 The Clerk of the Court is instructed to close the case.

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21 DATED: November 12, 2019.

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24 **RICHARD F. BOULWARE, II**
25 **UNITED STATES DISTRICT JUDGE**
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